

### § 404.3

### 17 CFR Ch. IV (4-1-03 Edition)

Commission” mean any rule or regulation of the Secretary.

(2) For the purposes of this section, the term “non-resident government securities broker or dealer” means:

(i) In the case of an individual, one who resides in or has his principal place of business in any place not subject to the jurisdiction of the United States;

(ii) In the case of a corporation, one incorporated in or having its principal place of business in any place not subject to the jurisdiction of the United States; and

(iii) In the case of a partnership or other unincorporated organization or association, one having its principal place of business in any place not subject to the jurisdiction of the United States.

(d) *Effective date.* Paragraph (a) of this section shall be effective on October 31, 1987, *except that* registered government securities brokers and dealers are required to maintain the records specified in § 240.17a-3(a) (12), (13), (14) and (15) beginning July 25, 1987.

(Approved by the Office of Management and Budget under control number 1535-0089)

[52 FR 27952, July 24, 1987, as amended at 60 FR 11026, Mar. 1, 1995; 60 FR 20399, Apr. 26, 1995]

#### **§ 404.3 Records to be preserved by registered government securities brokers and dealers.**

(a) Every registered government securities broker or dealer, except a government securities interdealer broker subject to the financial responsibility rules of § 402.1(e) and a registered government securities broker or dealer that is also a futures commission merchant registered with the CFTC, shall comply with the requirements of § 240.17a-4 of this title (SEC Rule 17a-4), with the following modifications:

(1) References to “broker or dealer” and “broker and dealer registered pursuant to Section 15 of the Act” include registered government securities brokers or dealers.

(2) References to §§ 240.17a-3, .17a-4, and .17a-5 mean such sections as modified by this part and part 405 of this chapter.

(3) References to § 240.15c3-1, relating to net capital, and “Computation for

Net Capital” thereunder mean § 402.2 of this chapter and the computation of the ratio of liquid capital to total haircuts required thereunder.

(4) References to § 240.15c3-3, relating to possession or control of customer securities and balances, mean § 403.4 of this chapter.

(5) References to Form X-17A-5 mean Form G-405 (§ 449.5 of this chapter).

(6) The computation described in § 240.17a-4(b)(8)(x) is not required.

(b) A government securities interdealer broker subject to the financial responsibility rules of § 402.1(e) and a registered government securities broker or dealer that is also a futures commission merchant registered with the CFTC, shall comply with the requirements of § 240.17a-4 of this title (SEC Rule 17a-4), with the following modifications:

(1) References to “broker or dealer” and “broker and dealer” include registered government securities brokers or dealers.

(2) References to §§ 240.17a-3, 240.17a-4, and 240.17a-5 mean such sections as modified by this part and part 405 of this chapter.

(3) With respect to a government securities interdealer broker subject to the financial responsibility rules of § 402.1(e) of this chapter, references to § 240.15c3-1, relating to net capital, and “Computation for Net Capital” thereunder include the modifications contained in § 402.1(e) of this chapter.

(4) References to § 240.15c3-3, relating to possession or control of customer securities and balances, mean § 403.4 of this chapter.

(c) This section shall be effective on July 25, 1987.

(Approved by the Office of Management and Budget under control number 1535-0089)

[52 FR 27952, July 24, 1987, as amended at 60 FR 11026, Mar. 1, 1995]

#### **§ 404.4 Records to be made and preserved by government securities brokers and dealers that are financial institutions.**

(a) *Records to be made and kept.* Every financial institution that is a government securities broker or dealer and that is not exempt from this part pursuant to part 401 of this chapter shall comply with the requirements of

## Department of the Treasury

## § 404.5

§§ 404.2 and 404.3 unless such financial institution:

(1) Is subject to 12 CFR part 12 (relating to national banks), 12 CFR part 208 (relating to state member banks of the Federal Reserve System) or 12 CFR part 344 (relating to state banks that are not members of the Federal Reserve System), or is a United States branch or agency of a foreign bank and complies with 12 CFR part 12 (for federally licensed branches and agencies of foreign banks) or 12 CFR part 208 (for uninsured state-licensed branches and agencies of foreign banks) or 12 CFR part 344 (for insured state licensed branches and agencies of foreign banks);

(2) Complies with the recordkeeping requirements of § 450.4(c), (d) and (f) of this chapter; and

(3) Makes and keeps current:

(i)(A) A securities record or ledger reflecting separately for each government security as of the settlement dates all “long” or “short” positions (including government securities that are the subjects of repurchase or reverse repurchase agreements) carried by such financial institution for its own account or for the account of its customers or others (except securities held in a fiduciary capacity) and showing the location of all government securities long and the offsetting position to all government securities short, including long security count differences and short security count differences classified by the date of the count and verification in which they were discovered, and in all cases the name or designation of the account in which each position is carried;

(B) A complete and current Form G-FIN-4 (§ 449.3 of this chapter) or Form U-4 (promulgated by a self-regulatory organization) or Form MSD-4 (as required for associated persons of bank municipal securities dealers) for each associated person as defined in § 400.3(c) of this chapter;

(C) A Form G-FIN-5 (§ 449.4 of this chapter) or Form U-5 (promulgated by a self-regulatory organization) or Form MSD-5 (as required for associated persons of bank municipal securities dealers) for each associated person whose association has been terminated as provided in § 400.4(d)(2) of this chapter; and

(D) A complete and current Form G-FIN (§ 449.1 of this chapter) and, if applicable, a Form G-FINW (§ 449.2 of this chapter).

(ii) For purposes of paragraph (a)(3)(i)(A) of this section, “safe-keeping” may be shown as a location of any securities long as long as the financial institution complies with the requirements of part 450 of this chapter with respect to such securities.

(b) *Preservation of records.* (1) The records required by paragraph (a)(3)(i)(A) of this section shall be preserved for not less than six years, the first two years in an easily accessible place.

(2) The records required by paragraphs (a)(3)(i) (B) and (C) of this section shall be preserved for at least three years after the person who is the subject of the record has terminated his employment and any other association with the government securities broker or dealer function of the financial institution.

(3) The records required by paragraph (a)(3)(i)(D) of this section shall be preserved for at least three years after the financial institution has notified the appropriate regulatory agency that it has ceased to function as a government securities broker or dealer.

(c) *Effective date.* This section shall be effective on July 25, 1987, *except that* until October 31, 1987, a financial institution government securities broker or dealer is not required to make and keep current the securities position record required by paragraph (a)(3)(i)(A) of this section.

(Approved by the Office of Management and Budget under control number 1535-0089)

[52 FR 27952, July 24, 1987, as amended at 53 FR 28987, Aug. 1, 1988; 60 FR 11026, Mar. 1, 1995; 62 FR 7155, Feb. 18, 1997]

### **§ 404.5 Securities counts by registered government securities brokers and dealers.**

(a) *Securities counts.* Every registered government securities broker or dealer shall comply with the requirements of § 240.17a-13 of this title (Commission Rule 17a-13), with the modification that references to “broker or dealer” and “broker and dealer registered pursuant to Section 15 of the Act” include